

INFORMATION FOR FIDUCIARIES

*Furnished to Fiduciaries by:
Clerk, Circuit Court of Fauquier County
29 Ashby St., Warrenton, VA . 20186*

For the purpose of these notes a “fiduciary” can be thought of as someone who is appointed by the Court or the Clerk to handle the estate or property of others (such as an Executor, Administrator, Curator, Guardian, Conservator, Committee, or Trustee). You have qualified before the Court or Clerk as a fiduciary, and as such you have the duty to administer the estate under your fiduciary control in accordance with the laws of the Commonwealth of Virginia. Among other requirements, you must file certain documents (outlined below) with the Commissioner of Accounts at the following address.

**W. N. TIFFANY, JR.
COMMISSIONER OF ACCOUNTS
FOR THE CIRCUIT COURT OF FAUQUIER COUNTY**
51 Culpeper Street
Warrenton, VA 20186
Telephone: 540-347-3511
Hours: 8:30 a.m. - 4:30 p.m.

Although a fiduciary is not required to retain an attorney or an accountant to assist the fiduciary in administering an estate, there are many rules and regulations to deal with, and the Court, and the Clerk’s Office, and the Commissioner of Accounts Office cannot be your lawyer or accountant. Should you need such legal or accounting advice, you should seek the advice of an attorney and/or an accountant. Consulting with professional help proficient in fiduciary and estate administration matters can avoid many problems inexperienced fiduciaries face, and it is generally less expensive to do things correctly the first time.

The notes below are offered only as the very broadest, general, and by no means complete, outline of some of the matters that you and your advisors will want to take into account administering and accounting for the estate that comes under your control as a fiduciary.

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I. AFFIDAVIT OF NOTICE

Virginia Code § 64.1-122.2. requires the personal representative of a decedent's estate or the proponent of a Will to (a) give a form of "Notice" of probate and/or qualification to specified persons, and (b) file with the Clerk of the Circuit Court an "Affidavit of Notice" stating that the required "Notices" were given. The Clerk will have given you forms for these two documents. You must file the "Affidavit of Notice" with the Clerk within four months of the date of probate or qualification.

II. INVENTORY

A. General. Virginia Code § 26-12 requires every fiduciary to file with the Commissioner of Accounts an Inventory of the assets of the estate within four months from the date of the fiduciary's qualification, with the exception of a trustee of a trust under a Will who must file an Inventory within four months after any asset is received by the Trustee. The Clerk will have given you a form for the Inventory at the time of your qualification. The Inventory form should be filled out by legible print in black pen or typewritten. The Clerk's recording fee will normally have been paid at the time of qualification. When you file the Inventory with the Commissioner of Accounts you should include two copies of the Inventory and a check payable to "Commissioner of Accounts" for the Inventory fee based on the value of the assets in the probate estate excluding real estate as follows.

<u>Value of Assets</u>	<u>Fee</u>
\$0 - \$ 50,000	\$50.00
50,001 – 200,000.....	\$100.00
Above 200,000	\$150.00

These fees are minimum fees and you may be billed for additional fees by the Commissioner of Accounts.

B. Assets should be itemized in detail and listed at their fair market values as of the following dates:

1. If you are an Executor or Administrator, as of the date of death.
2. If you are a Trustee under a Will, as of the date the trust receives assets.
3. If you are a Conservator or Guardian, as of the date of your qualification.
4. If additional assets are discovered after you have filed the Inventory, or

if you discover that you filed an Inventory containing erroneous information, you should file an Amended or Additional Inventory, in duplicate, with the Commissioner of Accounts within four months of the time new assets or error are discovered.

C. Tangible personal property. All tangible personal property should be listed. Each item of tangible personal property that:

1. is specifically mentioned in a Will, or
2. is worth over \$500

should be listed separately and with its own separate value.

D. Stocks, bonds, and other securities. Each security should be listed separately (not merely by reference to a brokerage account) and should show the following information separately for each security.

1. Name of the security.
2. Number of shares or bonds.
3. Fair market value of bonds at the time of death.

E. Bank accounts, certificates of deposit, payable on death (POD) accounts, Totten trusts (another form of POD account) should show:

1. Name of institution.
2. Value as of the date of death.
3. Multiple party accounts reported on Part 2. of the Inventory should show the above information plus the names of all joint owners. Multiple party accounts are those in the name of more than one person or those which name a beneficiary, such as:
 - a. Bank accounts in more than one name.
 - b. Certificates of deposit in more than one name.
 - c. Payable on death (POD) accounts or transfer on death (TOD) accounts.
 - d. Totten trusts (another form of POD account)

F. Real Estate should be listed by reference to number of acres, location, and PIN (parcel identification number) which is found on the real estate tax bills. Real estate may be listed on the Inventory at the assessed value shown on the real estate tax bills. If a Will is involved and (a) gives you powers to sell decedent's real estate by referencing Virginia Code § 64.1-57 or (b) otherwise gives you the power to sell decedent's real estate, any real estate in Virginia should be reported on Part 3. of the Inventory, regardless of whether the Will gives the real estate any specific beneficiary.

G. Signatures. The Inventory must be signed by each fiduciary.

H. Copies. Inventories should be filed with the Commissioner of Accounts in duplicate or the Commissioner of Accounts will charge the same fees as the Clerk for making copies.

III. PAYMENT OF OBLIGATIONS

A. Determine whether the estate is solvent to pay all debts, taxes, administration expenses, any other applicable obligations.

1. If the estate is insolvent, do not pay any debts, and do not make any distributions until you have consulted with an attorney who is qualified to guide you through the handling of an insolvent estate (Virginia Code § 64.1-157 is one of the code sections involved cases where the assets are less than the obligations). Handling an insolvent estate is very complex, and, if you do it incorrectly, you will be personally liable for amounts misspent. Remember that costs of administration receive first priority under the insolvent statute. Attorneys' fees, therefore, will be paid prior to the payment of any debts or taxes.
2. If there are sufficient assets to pay all obligations, but not enough to honor in full all bequests under a Will, you will need to abate the gifts to beneficiaries. You should consult an attorney qualified to guidance you as this is a very complex procedure.
3. If the estate is clearly solvent, you should pay all legal debts as soon as possible, subject to the terms of the Will, or the Court Decree, or other controlling law or documents.

B. Creditors.

1. The fiduciary has the duty to determine what obligations are just, and to pay all of the just obligations, and to make sure not to pay anything that is not a proper obligation of the estate.
2. Claims of creditors are preferred and must be paid or provided for before any assets become distributable to any beneficiaries.
3. Taxes. Tax authorities should be treated as creditors to be paid ahead of beneficiaries. It is the duty of the fiduciary to ascertain that any and all taxes are satisfied. This includes individual income taxes, personal property taxes, real estate taxes, business taxes, estate taxes, fiduciary taxes, etc. It is recommended that the fiduciary consult with an attorney or accountant to determine the estate's various tax liabilities. When filing accounts you must make certain certifications about taxes. A copy of a form for that tax certification is attached at the end of these notes.
4. If you are unsure whether a claim is proper, you may request the Commissioner of Accounts to rule on the disputed claim.

IV. ACCOUNTINGS

A. Unless you are Trustee under a Will that waives Trustee accountings, you must account for all assets received, disbursed, and distributed by filing accountings with the Commissioner of Accounts . Accountings must be typewritten or printed legibly in black ink, signed by each fiduciary, and the accountings, together with the tax certification form that is attached at the end of these notes, must be filed with the Commissioner of Accounts together with receipts, vouchers, bank statements and any other documentation that is required to support all entries in the Accounting. Accountings should be filed in duplicate or the Commissioner of Accounts will charge the same fees as the Clerk for making copies. You need file only one set of supporting documents.

B. First Accountings.

1. First accounts should begin on the date that the fiduciary qualified as such.
2. Executors and Administrators must file a first accounting with the Commissioner of Accounts within 16 months from the date of their qualification, and the first accounting should cover a period of twelve months from the date of qualification (Virginia Code § 26-17.5.). An accounting for a period of less than a year will be permitted if the account is filed with the Commissioner of Accounts before four (4) months after the end of the shorter accounting period.
3. Trustees of Trusts under Wills where accountings are not waived must file a first accounting with the Commissioner of Accounts by May 1, of the year following initial funding of the trust. (Virginia Code § 26-17.6.)
4. Conservators, Guardians of Minors Estates, Committees, Trustees under § 37.1-134.20 must file a first accounting with the Commissioner of Accounts within six months from the date of their qualification. (Virginia Code § 26-17.4.)
5. Curators should check with the Commissioner of Accounts regarding the date that their first accounts are due.

C. Second and subsequent accountings must be filed with the Commissioner of Accounts within 16 months from the ending date of the prior account, and should cover 12 months. A final accounting may cover fewer than 12 months.

D. Every accounting filed must be accompanied by the following:

1. The tax certification form that is attached at the end of these notes. The form must be signed by each fiduciary. Additional copies of the form may be obtained by calling the Commissioner of Accounts' office.
2. Receipts and Vouchers are required in support of all transactions. All bills, canceled checks or bank imaging copies of cleared checks, bank statements, brokerage confirmations and brokerage statements,

settlement statements for sales of real estate, titles for cars, boats, etc., and receipts for distributions must be provided to the Commissioner of Accounts when you file your accountings, along with any other documentation the Commissioner may request. It is suggested that you make disbursements and distributions from a separate checking account at a bank that provides imaging copies of checks as a regular part of the bank's monthly statements. Receipts and vouchers must be filed, but they do not need to be filed in duplicate.

3. Original canceled checks or bank imaging copies, debit memos or signed receipts for each disbursement shown on the accounting. All imaging copies must also include the back of the check showing the endorsement. Receipts and vouchers should be organized in the same order that they appear on the accounting. Be sure to put a date for each entry on your accounting. The date for disbursements and distributions should be the date on the check, not the date they appear on your bank statement.
4. Signed receipts for any distributions of assets delivered in kind, such as cars, stock, jewelry, household furnishings, etc., shown on the accounting. Receipts should name the asset received, its value, and the paragraph of the Will the receipt satisfies, if appropriate. If you wish to make a distribution pursuant to Virginia Code § 8.01-606 concerning distributions of small amounts, check with your attorney before you make any such distribution.
5. Verification of each asset remaining on hand. All accountings, other than the final accounting, must contain an itemized list of the assets remaining in the hands of the fiduciary as of the ending date of the accounting showing the market value of same. and statements. If a promissory note is owing to or by the person for whom the fiduciary acts, the original promissory notes must be exhibited to the Commissioner of Accounts unless a bank is handling the collection of the note, in which instances, a statement from the bank certifying a true copy of the promissory note and the principal balance as of the ending date of the accounting will be accepted.
6. A final accounting must show ZERO assets on hand. No assets may be held in escrow by the fiduciary for any reason.
7. If you are filing an interim accounting that is not a final accounting, you will be sent a bill from the Commissioner of Accounts office for Commissioner's fee and Clerk's fees after the account has been reviewed. If you are filing a final accounting, be sure to contact the Commissioner of Accounts office to find out the Commissioner and Clerk's fees before you distribute the estate.

V. STATEMENT IN LIEU OF ACCOUNT

A. Virginia Code § 26-20.1 permits certain fiduciaries who are the sole residual beneficiaries of estates of decedents to file a Statement in Lieu of Settlement of Accounts. Such a statement may be filed after six months have passed from the date the personal fiduciary qualified, and after all debts, funeral expenses, administration expenses, taxes and bequests have been satisfied, and the residue has been delivered to the residual beneficiaries.

B. If administration of the estate has not been completed when a Statement in Lieu of Settlement of Accounts is due, the fiduciary(ies) may file instead either an interim account, or a written Notice of Intent to File a Statement In Lieu of Settlement of Accounts.

C. Statements In Lieu of Settlement of Accounts (or Notices of Intent to file same) are due on the same schedule as full detailed accountings. Statements in Lieu of Settlement of Accounts (and Notices of Intent to file same) must be signed by each fiduciary before a notary public, and filed with the Commissioner of Accounts in duplicate along with the appropriate filing fee and receipts showing satisfaction of any bequests other than residual bequests.

VI. HEARING TO RECEIVE PROOF OF DEBTS AND DEMANDS

A. Publishing notice to creditors is not required by law, but if you wish a measure of protection from unknown creditors or others who may have an interest in the estate, you may wish to request the Commissioner of Accounts to hold a Hearing to receive Proof of Debts and Demands (Virginia Code § 64.1-171) and then proceed to obtain an Order of Distribution from the Court in accordance with Virginia Code § 64.1-179.

B. If you decide to request a Debts and Demands Hearing, you must submit a written request to the Commissioner of Accounts to hold the Hearing, for which there is a Commissioner's fee and Clerk's fee, plus the cost of the newspaper advertisement. Virginia Code § 64.1-171 requires you to give written notice to known creditors and claimants whose claims are disputed. Disputed claims will be heard and the Commissioner of Accounts will file a report with the Court stating his findings on the disputed claims. Any party may file with the Circuit Court exceptions to the Commissioner's report.

VII. FIDUCIARY COMPENSATION

A. Fiduciary compensation is calculated differently for different types of fiduciaries (Executors, Administrators, Trustees, Conservators, Guardians, etc.). The Judicial Council of Virginia has promulgated through the Virginia Supreme Court "Guidelines for Fiduciary Compensation" which are not mandatory or conclusive

evidence of reasonable compensation. They are merely guidelines. The Commissioner of Accounts decides what is reasonable compensation in each case and may award more or less compensation than provided in the ‘guidelines’. The “guidelines” may be found at the following internet site:

http://www.courts.state.va.us/publications/2004_jcv_report.pdf

Clicking that site brings up a large pdf document that takes a while to download. But once downloaded, you can search that document for “fiduciary compensation” which will take you to a five-page section that contains the “Guidelines for Fiduciary Compensation”. A few general rules are as follows.

B. Virginia Code § 26-30 provides for fiduciaries to receive “reasonable” compensation. A determination of what is reasonable will be made by the Commissioner of Accounts. It is best for fiduciaries to write the Commissioner of Accounts requesting approval of a certain compensation and stating why that compensation is considered reasonable. This should be done in advance of paying any compensation to avoid the possibility that the compensation might not be approved. Non-binding guidelines for fiduciary compensation are promulgated by the Judicial Council of Virginia through the office of the Executive Secretary of the Supreme Court of Virginia.

C. Fiduciary compensation is for the complete handling of the administration of an estate. Therefore, if a fiduciary retains professionals or others to assist him, the fees paid for such assistance are charged against the commission permitted the fiduciary, if the services could otherwise have been performed by the fiduciary. But attorney fees for legal work over and above the normal fiduciary functions, e.g. to defend or initiate a law suit or seek Court Orders, may be paid from the estate directly and not charged against the fiduciary’s commission. And accountants’ fees for tax return preparation, or audit for periods prior to the decedent’s death, may be paid from the estate directly and not charged against the fiduciary’s commission.

D. Generally, in decedent’s estates, real estate passes directly on death to the heirs or beneficiaries and the Executor or Administrator has no control over the real estate. Hence, commission is not normally allowed to Executors and Administrators on the real estate. However, if the will directs the Executor to sell real estate, or if it is necessary for the Executor or Administrator to sell real estate to pay creditors or beneficiaries, then Executor’s or Administrator’s commission based upon the sales price may be allowed by the Commissioner of Accounts. The comments in this paragraph are intended for Executors and Administrators of decedent’s estates, and may or may not be applicable to other types of fiduciaries.

VIII. DISTRIBUTIONS TO BENEFICIARIES

A. Distributions by a personal representative of a decedent’s estate (usually an Executor or Administrator) cannot be compelled until six months after the date of appointment of the fiduciary and there are provisions for the beneficiaries to provide bond with surety before distribution. (Virginia Code § 64.1-177)

B. Virginia Code § 64.1-68 provides that interest on pecuniary legacies under a Will shall begin to run at the expiration of one year from the date of death of a decedent. That is, beneficiaries are due interest on pecuniary bequests after one year from the date of death of a decedent. Various statutes set the rate of interest that must be paid.

IX. BOND AND SURETY

A. Bond is the promise of the fiduciary that the fiduciary will discharge his fiduciary duties as required by law, and that the fiduciary will properly account for all money and property under fiduciary control, or else be personally liable up to the amount of the bond. Surety is the security given or a guarantee by an insurance company that a fiduciary will perform the fiduciary duties. The Court or Clerk fixes the initial amount of the bond and determines initial requirement for surety.

B. Whenever an Inventory or Accounting is filed, and at any other time, depending on circumstances, the Commissioner of Accounts report to the Court whether bond or surety is sufficient or whether adjustment should be made in same.

C. Reduction of the amount of bond can be requested by a fiduciary when an Inventory or Accounting is filed which shows assets on hand, plus anticipated income, are less than the amount of the current bond.

X. INVESTMENT OF ASSETS

A. Fiduciaries are required to invest the assets under fiduciary control, and must make such investments within four months from the time the fiduciary receives the assets (Virginia Code § 26-39).

B. Virginia Code § 26-40 *et seq* provide lists of securities in which fiduciaries may invest.

C. Virginia Code § 26-45.3. *et seq* define the standards of care for investments known as the "Prudent investor rule".

D. Virginia Code § 26-5 deals with liability of fiduciaries for loss of assets, and Virginia Code § 55-277.1. *et seq*, deals with the "Uniform Principal and Income Act".

XI. GENERAL INFORMATION

A. Forms. Forms for Accounts, Statements in Lieu of Settlement of Accounts, instructions, sample accounts showing the minimum detail required, etc., can be found at the official "Virginia Judicial System" internet site showing Circuit Court Fiduciary Forms at: <http://www.courts.state.va.us/forms/circuit/fiduciary.html>

At that site you can bring up the internet forms and fill them out right there on your computer screen if you wish. But make sure that you click the button at top middle of the form that says, "**Print for Submission to Court**". If you do not click that button your

product will have grayed fields, and the Court will not accept such forms, and we must return them to you.

1. Note. Please make sure to prepare and attach as part of your accounts the separate itemized lists that the account forms specifically call for, showing the details of each of the transactions that are included in the summary totals on the Form for the account cover page. For examples of how this is done, see the sample accounts for your type of case at the above-referenced site.
2. Note. If you do not have access to the internet, or need any forms, just call the Commissioner of Accounts Office and that office will be glad to mail you any forms you request.

B. Filing documents with the Commissioner of Accounts. You can file documents with the Commissioner of Accounts (a) by mail, FedEx, UPS or other carrier, or (b) by personal delivery to the Commissioner's office when the office is open, or (c) by just dropping documents through the mail slot in the Commissioner's front door any time, day or night, weekdays, weekends or holidays, whether or not the office is open. Sometimes the Commissioner's office is closed for trips to the Court, Clerk's Office, etc., so, if you plan to come to the Commissioner's office, please call before coming to be sure that the office will be open and that staff will be on hand to help you at the time that you want to come.

C. Failure to timely file proper documents. Past experience shows that it is desirable to point out that various statutes provide that failure to timely file proper documents can result in issuance of summons usually served by the Sheriff's office, report of delinquency to the Court, additional charges that are payable by the fiduciary personally (not by the estate), forfeiture of fiduciary commissions, removal of the fiduciary from office, and other consequences. Of course, such consequences are of no concern and never come into play when documents are properly prepared and timely filed.

D. Limited Nature of These Notes. These notes are furnished as a courtesy of Fauquier County, and it is emphasized that they are merely the broadest outline of some very general and limited aspects of fiduciary administration. Every estate is different, and there are always exceptions and additions to the notes outlined above, as well as much more to consider than that which is outlined above. It is your responsibility as a fiduciary to find out how to administer the estate. The Court, the Clerk's Office, and the Commissioner of Accounts Office cannot be your legal counsel or your accountant. And past experience has shown that, although it costs something to have professional help, it often actually saves time and money to seek professional help in administering property as a fiduciary.

E. Some additional sources of information other than these notes are:

1. Help from professionals.
2. General information about probate and decedents' estates and trusts under Wills is at the following internet sites.

<http://www.virginiaestatelaw.com>

<http://www.virginiaestatelaw.com/main/chapters/account/overview.shtml>

3. Manual For Commissioners of Accounts is a large three-ring volume that is available in many professionals' offices, and in the offices of many bank Trust Departments or Wealth Management Departments, and is available for purchase by anyone from:
Virginia Committee on Continuing Legal Education
PO Box 4468
Charlottesville, VA 22905
Telephone: 800-979-8253
4. Forms and Instructions and Sample Documents. One free source of forms for Inventories, Accounts, Statements in Lieu of Settlement of Accounts, instructions, sample accounts showing the minimum detail required, etc., is the official "Virginia Judicial System" internet site showing Circuit Court Fiduciary Forms and instructions at:
<http://www.courts.state.va.us/forms/circuit/fiduciary.html>
You should find forms for all types of accountings at that site. But some "samples" of completed forms are still under construction. So, if you do not find at that site a "sample" of the particular type of account that you need, look at the "Sample Account for Trust" found at
<http://www.virginiaestatelaw.com/main/chapters/forms/forms.shtml>
5. Filling Out Forms. When you access forms on the above internet sites, you can bring up forms and fill them out right there on your computer screen if you wish. But make sure that you click the button at top middle of the form that says, "**Print for Submission to Court**". If you do not click that button your product will have grayed fields, and the Court will not accept such forms, and we must return them to you.
6. Separate Itemized Lists. Please make sure that when preparing accountings you prepare and attach as part of your accountings the separate itemized lists that the account forms specifically call for, showing the details of each of the transactions included in those totals. For examples of how this is done, see the sample accounts for your type of case at the above-referenced site.
7. Additional Source for Forms. If you do not have access to the internet, or need any forms, instructions, or sample accounts, you can call the Commissioner of Accounts Office, and that office will be glad to mail you any of those items that you request.

TAX CERTIFICATION BY THE FIDUCIARY

Virginia Code § 58.1-22, 58.1-23, and 58.1-911 provide in substance that no Commissioner of Accounts shall file any report of a fiduciary's account until it shall be made to appear to the Commissioner that certain taxes have been paid or provided for. In accordance therewith, the undersigned fiduciary(ies) certify(ies) as follows.

Fiduciaries should fill in the applicable blanks below, and strike out any inapplicable tax paragraphs below.

1. I/we have read Virginia Code §§ 58.1-22, 58.1-23, and 58.1-911, and have made inquiry to both the Treasurer or the Director of Finance of the jurisdiction of Probate, and to the Virginia Department of Taxation with respect to any unpaid taxes and levies assessed against the decedent.
2. A Virginia Estate Tax Return was filed and \$_____ tax was due and paid (Attach a copy of the closing letter from either the Virginia Department of Taxation or the Internal Revenue Service).
3. Decedent died (date)_____, and the value of all of decedent's assets, including jointly owned property, life insurance, retirement plans, lifetime taxable gifts, and the probate estate did not exceed the exemption equivalent amount of \$_____; and that therefore, no Virginia Estate Tax Return was required to be filed.
4. I/we have ascertained that no taxes are chargeable against or payable by the undersigned as fiduciary(ies).
5. There remains in the estate a sufficient sum to pay all taxes chargeable against me/us as fiduciaries.
6. All taxes, whether state or local, assessed and chargeable upon the estate and/or its income, have been paid in full. **(Final Accounts must contain this paragraph's certification that all taxes have been paid in full.)**

Date:_____

Fiduciary's signature

Date:_____

Fiduciary's signature

Date:_____

Fiduciary's signature

Date:_____

Fiduciary's signature